



UNITED STATES MARINE CORPS

MARINE CORPS BASE
PSC BOX 20004
CAMP LEJEUNE, NORTH CAROLINA 28542-0004

BO 11101.46B

BDFH

OCT 21 1996

BASE ORDER 11101.46B

From: Commanding General
To: Distribution List

Subj: LIABILITY OF OCCUPANTS FOR DAMAGE TO FAMILY HOUSING

Ref: (a) MCO P11000.22
(b) BO P11101.32G Family Housing Handbook
(c) DOD Manual 7200.10-M
(d) BO 11101.39
(e) BO 5810.1

Encl: (1) Liability Policy

1. Purpose. To establish procedures for determining liability of family housing occupants for damage or neglect of quarters and to set forth procedures for reimbursement through involuntary pay checkage when required.

2. Cancellation. BO 11101.46A

3. Background. Reference (a) establishes policy and provides guidance concerning occupants' responsibilities for the care and maintenance of family housing and occupants' liability for damage to family housing, equipment or furnishings.

4. Information

a. Occupants of Family Housing will be held accountable for any loss or damage beyond normal wear and tear to their assigned unit, any equipment or furnishings contained therein, and the surrounding grounds as defined in reference (b), when the loss or damage is caused by the abuse or negligence of the occupant, dependents or guests. This liability encompasses responsibility for proper yard maintenance and satisfactory cleaning of quarters upon change of occupancy.

b. The following definitions apply:

(1) Abuse. Deliberate unauthorized use of government property or willful misconduct.

(2) Negligence. The failure to act as a reasonable, prudent person would have acted under similar circumstances.

(3) Gross Negligence. An extreme departure from the course of action to be expected of a reasonably prudent person, all circumstances being considered, and accompanied by a reckless, deliberate or wanton disregard for the foreseeable consequences of the act.

(4) Willful Misconduct. Intentional damage, destruction, or loss of government property.

5. Procedures

a. All occupants (military sponsors) of family housing will be informed of their responsibilities and potential liability when they are assigned government quarters, by issuance of a copy of reference (b) upon initial check in.

b. The condition of the quarters upon occupancy and vacating will be documented by a completed checklist signed by both the occupant and a housing representative.

c. When damage to the quarters beyond normal wear and tear is first made known to housing officials and it is apparent that the damage is occupant-caused, the occupants will be offered the opportunity to make the repair/replacement themselves (the work being subject to approval by housing officials).

d. If station forces perform the work, and the cost to the government is less than \$500.00, the occupant will be sent a sundry charge requesting payment within 30 days (10 days for a change of occupancy).

e. If the cost of repairs is more than \$500.00, or the occupant contests the sundry charge, or the allowed payment time elapses without payment or arrangements for voluntary pay checkage, the Director of Family Housing will request a Surveying Officer to investigate and complete a Report of Survey (DD Form 200). The survey will be conducted and the report completed in accordance with reference (c) and enclosure (1).

f. If the Survey Officer determines that the loss or damage was caused by the abuse or negligence of the occupant or the occupant's dependents or guests, and recommends that pecuniary charges be assessed, the Survey Officer will allow the occupant to examine the completed Report of Survey and advise him of the following:

(1) The nature and amount of the loss or damage and the factual basis for the determination of liability.

(2) The intention to initiate proceedings to recover the costs of necessary repairs, replacements, or maintenance through deductions from pay.

(3) The right to consult with a military judge advocate or civilian attorney retained at member's own expense.

(4) The right to rebut the findings.

(5) The right to make remittance directly to the Family Housing Office or arrange for voluntary pay deduction.

(6) The right to appeal the findings of the Report of Survey to the Commanding General, Marine Corps Base.

g. The occupant must then complete item 234 of the Report of Survey and may submit a statement and/or additional evidence or exhibits. If the military sponsor is not available due to TAD, deployment, transfer, etc., the report will be forwarded through the mail in accordance with paragraph 31106.C5 of reference (c). The Survey Officer will carefully consider any additional information provided, and either sustain the finding of liability or make an amended recommendation. The completed Report of Survey will then be forwarded to the Commanding General, Marine Corps Base, who will review the report and approve or amend the recommendation of the Survey Officer.

h. If a determination of pecuniary liability of the occupant is approved, the report will be forwarded to the Director, Family Housing, who will prepare a DD Form 139 (for Marine Corps personnel) or DD Form 124 (for other service personnel) to cause a checkage of the occupant's pay. The monies collected will be deposited to the O&M account of the Family Housing Division.

i. The cost of repairs/replacements of the standard items and services shall be established jointly by qualified engineers/cost estimators from Family Housing and Base Maintenance and updated annually. A list of established prices shall be posted prominently in the Family Housing Office. Costs for cleaning quarters will be determined by the lowest of three bids from authorized cleaning agents, in accordance with reference (d).

j. The liability of the occupant will be limited to the equivalent of one month's base pay, except where the damage is determined to be the result of gross negligence or willful misconduct of the occupant, dependents or guests, as defined in paragraph 3b above. In these cases the occupant will be liable for the full amount of the loss or damage.

001 22 1955

k. When damage to government quarters is caused by a fire and the provisions of subparagraph 4e above apply, an informal one-officer investigation will be conducted in accordance with paragraph 4 of reference (e). This investigation will be appended to the Report of Survey as a supporting document.

l. Appeal. An individual held liable may appeal in writing to the Commanding General, Marine Corps Base, within one year of final approval of the Report of Survey. If the appeal is granted, the monies collected will be refunded, similar to an erroneous collection. If the appeal is denied, the file will be sent to the Commandant of the Marine Corps (Code LFF), and no further action taken.

6. Action

a. Director Family Housing. Establish internal operating procedures to implement and comply with the provisions of this Order. Request appointment of a Survey Officer, when required.

b. AC/S, Facilities. Appoint a Survey Officer when requested. Survey Officers will be disinterested officers or staff noncommissioned officers (senior in rank to the occupant) assigned to Marine Corps Base.

c. Base Maintenance Officer. Assist the Director of Family Housing in preparing and updating the list of standard costs for repairs/replacement. Provide cost estimates for non-standard damages.

d. Staff Judge Advocate. Review all Reports of Survey and any appeals prior to forwarding to the Commanding General for final action.

7. Summary of Revision. This Order has been revised in its entirety and should be completely reviewed.

8. Reserve Applicability. This Order is applicable to the Marine Corps Reserve.


J. T. MURRAY
Chief of Staff

DISTRIBUTION: A

LIABILITY POLICY

A. The Secretaries of the Military Departments and Directors of the Defense Agencies shall ensure that:

1. All applicable instructions and directives conform to Section 2775 of Title 10, U.S.C.

2. Occupants are informed of their responsibilities and potential liabilities when they are assigned government quarters.

3. Proper procedures consistent with the policy included within this memorandum are established for determining abuse and negligence and for processing of loss or damage cases.

4. Occupants are held accountable for any loss or damage to the unit to which they are assigned or any equipment or furnishings contained therein when the loss or damage was caused by the abuse or negligence of the occupant, dependents or guests.

5. Occupants who are assessed charges for damage to housing are given due process protection in accordance with DoD Manual 7200.10-M, "Department of Defense Accounting and Reporting of Government Property Lost, Damaged, or Destroyed."

6. The Reports of Survey process is prepared in accordance with paragraph 31105 of DoD Manual 7200.10-M when loss or damage to government provided housing or to the equipment or furnishings of government provided housing occurs and the damage appears to have been caused by the abuse or negligence of a member of the armed forces or the member's dependents or guests and the damage exceeds \$500. A Report of Survey under paragraph 31105 is also required in those cases where the loss or damage is less than \$500 and liability is contested. When the loss or damage does not appear to be caused by the abuse or negligence of a member of the armed forces or the member's dependents or guests, a Government Property Lost, Damaged, or Destroyed (GPLD) Survey Certificate shall be used. Adjudication procedures outlined in paragraph 31106 of this same manual are to be used to establish liability, and the determination required by paragraph 31106.B.2.a(2) shall be based upon whether the loss or damage was caused by the abuse or negligence of the member or the member's dependents or guests.

7. A determination is made regarding whether or not the loss or damage was caused by the gross negligence or willful misconduct of the member or the member's dependents or guests. This is required to assist the Services in determining whether or not to limit the liability of the member and the amount being

ENCLOSURE (1)

BO 11101.46B
OCT 21 1996

collected. To assist in making determinations described in these guidelines, the following definitions shall be used:

a. abuse--deliberate unauthorized use of government property or willful misconduct.

b. negligence--the failure to act as a reasonably prudent person would have acted under similar circumstances.

c. gross negligence--an extreme departure from the course of action to be expected of a reasonably prudent person, all circumstances being considered, and accompanied by a reckless, deliberate, or wanton disregard for the foreseeable consequences of the act.

d. willful misconduct--intentional damage, destruction, or loss of Government property.

8. If a determination is made based upon the procedures specified in paragraph 6 above that the loss or damage was caused by the abuse or negligence of the member or the member's dependents or guests, the installation commander, or his designee, shall advise the military housing occupant of the following:

a. The nature and amount of the loss or damage and the factual basis for the determination of liability.

b. The intention to initiate proceedings to recover the costs of necessary repairs or replacements through deductions from pay.

c. The right to consult with a military legal assistance officer or legal counsel retained at the member's own expense.

d. The right to rebut the findings.

e. The right to make remittance directly to the finance office.

f. The right to appeal the findings of the Report of Survey.

9. Qualified engineers or cost estimators use procedures provided in paragraph 31107 of DoD Manual 7200.10-M to determine the extent of loss or damage and also use locally established rates to determine the cost of the necessary repair or replacement.

ENCLOSURE (1)

10. Appeals from the findings of Reports of Survey are processed in accordance with paragraph 311109 of DoD Manual 7200.10-M. The authority to make payroll deductions sufficient to cover the cost of necessary repairs or replacements and the application of monies collected are contained in Titles 10 and 37, United States Code.

B. The liability of the occupant may be limited to an amount equivalent to one month's basic pay except where the damage or loss has been determined to be the result of either:

1. Gross negligence or willful misconduct of the occupant, or

2. Gross negligence or willful misconduct of the occupant's dependents or a guest of either the occupant or the occupant's dependents, under circumstances where the occupant was on notice of the particular risk involved and failed to exercise available opportunities for preventing or limiting the damage or loss. In the absence of evidence to the contrary, occupants will be presumed to be on notice of risks attending the activities of those whom the occupant invites upon the premises.

In either of these two excepted situations, the occupant will be held liable for all damages.

C. The Secretary concerned may compromise or waive a claim of the United States under Section 2775 of Title 10, United States Code, if the Secretary concerned, or his designee, based upon the unique circumstances of the individual case, determines that the waiver or compromise of the claim is in the best interests of the United States.

ENCLOSURE (1)